

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

BRICE BRAXTON,

Plaintiff,

v.

Civil Action No. 2:20CV38
(Judge Kleeh)

CITY OF BUCKHANNON, WEST
VIRGINIA; ST. JOSEPH'S HOSPITAL;
DEPUTY WILLIAM CHIDESTER,
UPSHUR COUNTY SHERIFF'S DEPARTMENT,
in his individual and official capacity;
and CORPORAL MARSHALL O'CONNOR,
BUCKHANNON POLICE DEPARTMENT,
in his individual and official capacity,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 89]

On September 14, 2020, the pro se Plaintiff filed a Complaint alleging a cause of action under 42 U.S.C. § 1983 for excessive force by law enforcement, discrimination and abuse on the basis of race, and coerced waiver of his Miranda rights. Compl., ECF No. 1. On January 4, 2021, Defendant St. Joseph's Hospital filed "Motion to Dismiss by Defendant St. Joseph's Hospital." ECF No. 26. Plaintiff filed a response in opposition to the Motion. ECF No. 81.

Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï for initial review. On April 29, 2021, the Magistrate Judge entered a Report and Recommendation ("R&R") [ECF No. 89],

BRAXTON V. CITY OF BUCKHANNON et al.

2:20-CV-38

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 89]

recommending that the Court grant the Motion to Dismiss [ECF No. 26].

The R&R also informed the parties regarding their right to file specific written objections to the magistrate judge's report and recommendation. Specifically, the magistrate judge gave the parties fourteen (14) calendar days after being served with a copy of the magistrate judge's recommended disposition to file "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection." The R&R further warned them that the "[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals." The docket reflects that the R&R was sent to the Plaintiff by first class mail, as requested by Plaintiff.¹ To date, no objections to the R&R have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely

¹ The Court is directing that materials in this matter be sent to Plaintiff not by certified mail but instead by regular, first-class United States Mail due to a request for the same by Plaintiff. At a hearing before the Magistrate Judge on March 15, 2021, Plaintiff stated that he his mailing address is that of a homeless shelter. As such, Plaintiff said, delivery of certified mail to a non-permanent address sometimes failed. However, according to Plaintiff, he had no such issues with regular, first-class United States Mail.

BRAXTON V. CITY OF BUCKHANNON et al.

2:20-CV-38

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 89]

made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [ECF No. 89]. The Motion to Dismiss is **GRANTED** [ECF No. 26]. The Complaint [ECF No. 1] is **DISMISSED WITH PREJUDICE**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record via electronic means and to the pro se Plaintiff via first class mail.

DATED: May 17, 2021

/s/ Thomas S. Klee
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE